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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,787	08/14/2001	Edward J. Noga	5051-551	9013

20792 7590 09/02/2003

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PO BOX 37428  
RALEIGH, NC 27627

EXAMINER
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ZEMAN, ROBERT A

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 09/02/2003.

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/929,787

Applicant(s)

NOGA ET AL.

Examiner

Robert A. Zeman

Art Unit

1645

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***Period for Reply****A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**1) Responsive to communication(s) filed on 14 August 2001.2a) This action is **FINAL**. 2b) This action is non-final.3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.**Disposition of Claims**4) Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.6) Claim(s) \_\_\_\_\_ is/are rejected.7) Claim(s) \_\_\_\_\_ is/are objected to.8) Claim(s) 1-27 are subject to restriction and/or election requirement.**Application Papers**9) The specification is objected to by the Examiner.10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. §§ 119 and 120**13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).a) All b) Some \* c) None of:1. Certified copies of the priority documents have been received.2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).a) The translation of the foreign language provisional application has been received.15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.**Attachment(s)**1) Notice of References Cited (PTO-892)4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.2) Notice of Draftsperson's Patent Drawing Review (PTO-948)5) Notice of Informal Patent Application (PTO-152)3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, 10 and 19, drawn to antimicrobial peptides and pharmaceutical compositions containing said peptides, classified in class 530, subclass 300.
- II. Claims 5-9, drawn to methods of isolating antimicrobial peptides, classified in class 435, subclass 71.1.
- III. Claims 11 and 20, drawn to methods of treating microbial infections, classified in class 514, subclass 13.
- IV. Claims 12-14 and 21-23, drawn to methods of reducing antibiotic resistance in bacteria, classified in class 514, subclass 13.
- V. Claims 15-16 and 24-25, drawn to antibodies, classified in class 530, subclass 388.1.
- VI. Claims 17-18 and 26-27, drawn to nucleic acids encoding antimicrobial peptides, classified in class 536, subclass 23.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions II-IV are each separate and distinct from each other as they are drawn to differing methods having different steps, different goals and leading to differing goals.

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Inventions I, V and VI are each separate and distinct from each other, as they comprise differing biochemical and immunological entities having differing properties and uses. In the

instant case Invention I is drawn to antimicrobial peptides while Invention V is drawn to antibodies and Invention VI is drawn nucleic acids.

Inventions I and II are each separate and distinct, as the compositions of Invention I cannot be used in the methods of Invention II.

Inventions II-III and VI are each separate and distinct from Invention IV, as the compositions of Inventions VI cannot be used in the methods of Inventions II-III.

Inventions II and IV are each separate and distinct from Invention V, as the compositions of Invention V cannot be used in the methods of Inventions II and IV.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the peptides of Invention I can be used for the production of monoclonal antibodies.

Inventions VI and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nucleic acids of Invention VI can be used for the production of the gene product.

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Invention V and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the

product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the antibodies of Invention V can be used in methods of protein purification.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I-VI would not be coextensive in scope., restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 308-7991. The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Robert A. Zeman  
September 2, 2003